

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(Criminal Jurisdiction)

Criminal  
Case No. 22/1481 SC/CRML

PUBLIC PROSECUTOR

v

ROGER JULIAN

*Dates of Trial:* 1, 3 & 4 September 2025  
*Before:* Justice V.M. Trief  
*In Attendance:* Public Prosecutor – Mrs B. Tamau  
Defendant – Ms C. Dehinavanua  
*Date of Decision:* 5 September 2025

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**VERDICT**

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A. Introduction

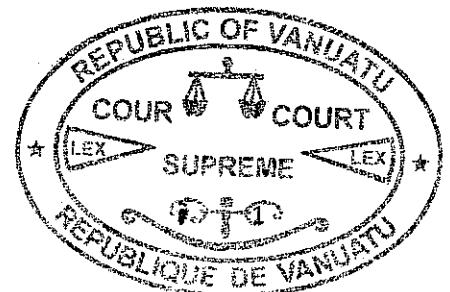
1. This matter proceeded to trial against the accused Roger Julian on 3 counts of unlawful sexual intercourse with a child under 13 years of age contrary to subs. 97(1) of the *Penal Code* [CAP. 135].

B. Law

2. Subsection 97(1) of the *Penal Code* provides as follows:

97. (1) *No person shall have sexual intercourse with any child under the age of 13 years.*  
*Penalty: Imprisonment for life.*

3. The charge of unlawful sexual intercourse with a child under 13 years of age has the following elements or legal ingredients which must be proved in order for a conviction to be entered:



- That at the time alleged, at Blackgate (L.T.C.) area on Malekula, Mr Julian had sexual intercourse with the complainant; and
- That the boy complainant was under the age of 13 years.

4. Section 89A of the *Penal Code* provides as follows:

89A. For the purposes of this Act, **sexual intercourse** means any of the following activities, between any male upon a female, any male upon a male, any female upon a female or any female upon a male:

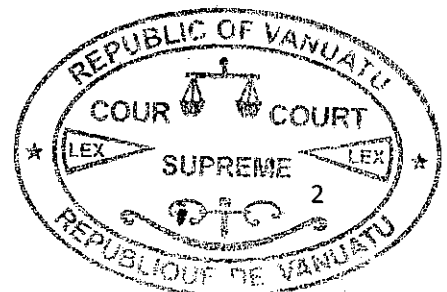
- the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or
- the penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or
- the introduction of any part of the penis of a person into the mouth of another person; or
- the licking, sucking or kissing, to any extent, of the vulva, vagina, penis or anus of a person; or
- the continuation of sexual intercourse as defined in paragraph (a), (b), (c) or (d); or
- the causing, or permitting of a person to perform any of the activities defined in paragraph (a), (b), (c) or (d) upon the body of the person who caused or permitted the activity.

5. The Prosecution had the onus of proof and was required to establish the allegations beyond a reasonable doubt before a finding of guilt could be made in respect of the charges. Mr Julian was not required to establish anything.

C. The Evidence

6. The Prosecution called four witnesses – the complainant (Prosecution witness 1, 'PW1'), the complainant's mother (Prosecution witness 2, 'PW2'), Madeleine Kilman (Prosecution witness 3, 'PW3') and Dr Jimmy Obed (Prosecution witness 4, 'PW4'). Mr Julian elected to give evidence. He also called Yajima Kilman as a witness (Defence witness 2, 'DW2') and Lami Toame as his final witness (Defence witness 3, 'DW3').

7. The evidence of the complainant was not given under oath in accordance with subs. 83(2) of the *Criminal Procedure Code* [CAP. 136] ('CPC') which provides as follows:



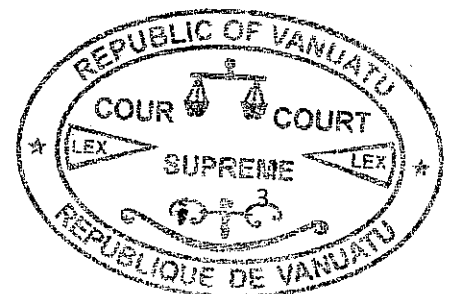
83. ....

(2) *Where any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, although not given upon oath, if, in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.*

8. The complainant is now 10 years old. I considered him to be a child of tender years. I was satisfied from the questions put to him and his answers, that he understood that he was obliged to tell the truth and that he understands the consequences of not telling the truth, hence that he is possessed of sufficient intelligence to justify the reception of his evidence.
9. Subsection 83(3) of the CPC provided that an accused shall not be liable to be convicted on the evidence of a child not given under oath unless that evidence is corroborated by other material evidence.
10. However, subs. 83(3) of the CPC was repealed by the *Statute Law (Miscellaneous Provisions) Act No. 19 of 2025*, which commenced into force on 24 June 2025. I understand that this legislative change was made to align with the *Evidence Act*, which Parliament enacted in May 2025, in which Parliament did away with the corroboration rule. The *Evidence Act* has not yet commenced into force.
11. The witnesses' demeanour was a small part of my assessment of the witness. I also looked for consistency within the witness' account; consistency when comparing the witness' account with that of the other witnesses; consistency when comparing the witness' account with relevant exhibits; and considered the inherent likelihood, or not, of the witness' account.
12. I reminded myself that if I were to draw inferences, they could not be guesses or speculation but had to be logical conclusions drawn from other properly established facts. Adverse inferences are to be drawn only if they are the only available inference to be drawn. Further, if more than one inference was available, the inference most favourable to the defendant must be drawn.
13. Mr Julian's record of interview with the Police was tendered by consent [**Exhibit P1**].

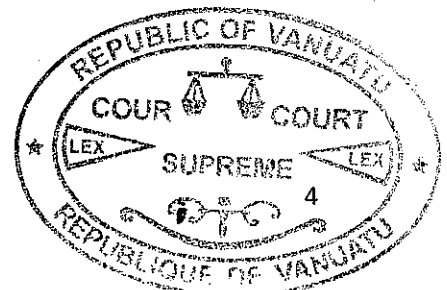
D. The Prosecution case

14. As stated above, the Prosecution called 4 witnesses.
15. **PW1** the complainant's evidence was that Mr Julian is his uncle. He gave evidence of three separate occasions that his uncle Mr Julian caused him (the complainant) to suck



on Mr Julian's penis ("*titi lo bol blo hem*"), and one occasion where Mr Julian caused him (the complainant) to lick Mr Julian's anus ("*kakai holshit blo hem*"). The complainant did not provide dates on which each incident occurred but he provided clear details as to the place where each incident occurred. He testified that the incident at the water tank occurred at the time they were mourning *apu* ('grandma') Susan's death.

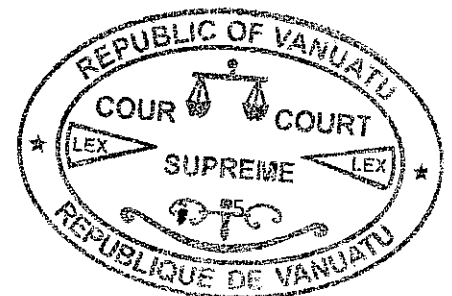
16. **PW2** the complainant's mother and **PW3** Madeleine Kilman in their evidence **confirmed the** dates on which the offending occurred. Putting the evidence of all 3 together, it is apparent that the offending at the thatch house next to Susan Kilman's house occurred first, that is, in December 2020. Then the offending at the water tank occurred in March 2021 when the family were mourning Susan Kilman's death (even though this was the first incident that the complainant testified about), and then the offending at John and Lami Toame's house. The final incident of offending was in May 2022 at Mr Julian's house.
17. The complainant confirmed in his evidence that he could not remember the dates when the various incidents occurred. I consider that is explained by his young age. He also gave his age as 6, which is incorrect, but I consider that is explained by his young age and by his schooling only up to class 3 level (he has not attended school for at least 2 years now). I consider that that also explains the order in which he related events, which was not in the chronological order which I find that they occurred in.
18. **PW4** Dr Jimmy Obed gave evidence of his assessing the complainant and then writing the psychiatry report dated 17 May 2024 concerning the complainant [**Exhibit P7**]. Dr Obed's evidence was that he had two sessions with the complainant and also information from the complainant's parents, and had given the complainant a provisional diagnosis of 'mild intellectual disability' (definition supplied). Further, that he was also of the opinion that the complainant could be suffering from some 'psychological trauma' (definition supplied).
19. Defence counsel submitted that the complainant's limited intellectual capacity, his suggestibility and the provisional nature of the psychiatry report all significantly affect the reliability of both the complainant's evidence and the conclusions contained in the doctor's report.
20. First, I do not accept that **Exhibit P7** is proof of the complainant's limited intellectual capacity. It is proof that Dr Obed's diagnosed the complainant in May 2024 of having a 'mild intellectual disability'. My assessment of the complainant is that he is possessed of sufficient intelligence to justify the reception of his evidence. I reject the submission that the complainant has limited intellectual capacity.



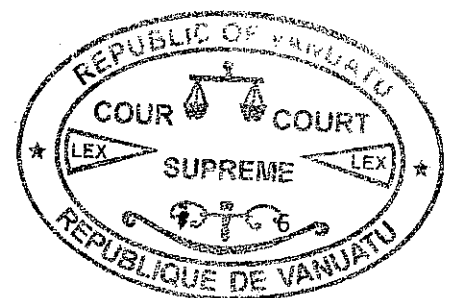
21. Secondly, **Exhibit P7** does not contain any statement as to the complainant's alleged suggestibility. The Defendant's case was that the complainant is suggestible in that he copies the swearing he has heard from young men at the barber shop. However, I consider that it is a natural consequence that a child copies what he sees and hears from others around him. I do not consider this undermines his evidence in respect of Counts 1-3.
22. Finally, I consider that the provisional nature of the psychiatry report dated 17 May 2024 [**Exhibit P7**] does not lessen the reliability of the complainant's evidence and/or the conclusions contained in the report. In my view, the complainant's evidence in September 2025 is not affected by Dr Obed's opinion and psychiatry report from 18 months before. The conclusions contained in Dr Obed's report are not relevant to the allegations in Counts 1-3 and I have not had regard to them in considering whether or not the Prosecution has proved each of those counts beyond a reasonable doubt.
23. For the foregoing reasons, I reject these submissions by defence counsel.

E. Count 1

24. This charge is that sometime in December 2020 at Blackgate (L.T.C.) area on Malekula, Mr Julian had sexual intercourse with the boy complainant by making him suck Mr Julian's penis. The complainant is alleged to have been 5 years old at the time.
25. The complainant's mother adduced her son's birth certificate into evidence [**Exhibit P6**]. I find that in December 2020, the complainant was 5 years old.
26. **PW1** the complainant's evidence was that Mr Julian (whom he calls, "Uncle Roger") made him suck Mr Julian's penis in the house that is close to *apu* Susan's house. He said that Mr Julian made him do that and then he (the complainant) cried. After that, his *apu* Madeleine hurried over, asked him why he cried and he told her that uncle Roger made him suck his penis, but uncle Roger had already ran off. He identified that house that he and Mr Julian were in in the photograph of the thatch ('*natangura*') house in **Exhibit P5**. He stated that the door of that house faced towards *apu* Susan's house which has corrugated iron roofing and was very close by to the house that he and Mr Julian were in.
27. The complainant's account remained unchanged in cross-examination. It was put to him that at the time, Mr Julian was setting up a TV set in that house and then left to grind kava. He agreed that when Mr Julian turned off the TV, he cried. He was vehement that he did not make up what he said about Mr Julian making him suck his penis (he answered, "*I no stret!*")



28. **PW3** Madeleine Kilman's evidence was that in December 2021, she made food and took it to her elderly mother Susan at lunchtime. She said that her mother told her that there were sounds from the thatch house next to her house and the sound of the complainant crying that made her think that Mr Julian was sexually harassing the complainant. Ms Kilman said that when she heard that, she decided to come outside and check the complainant. But before doing so, she stayed quiet and listened. She could not hear the complainant crying or any loud noises, but she could hear the sound of 2 people's movements from the thatch house. She said that the houses are less than a metre apart.
29. She said that when she went outside, the complainant was on the verandah of the thatch house but that Mr Julian had already left. She suspected that Mr Julian was sexually harassing the complainant so she went straight over to the complainant's grandmother and told her that they must ask the complainant if Mr Julian was doing something to him.
30. In cross-examination, Ms Kilman agreed that her mother Susan died in March 2021 therefore she got the date wrong – that it was in December 2020 that she took food to her mum and checked the complainant in the thatch house next door. She stated that within less than 2 minutes between her mum telling her what she suspected and her going outside, why did Mr Julian leave so fast if he had not been doing something wrong with the complainant.
31. The complainant's and Madeleine Kilman's accounts were consistent with each other's.
32. The accused **Mr Julian's** evidence was that he is 22 years old and lives at Blackgate area. He is the complainant's uncle. He stated that he went to set up a TV in the house, accompanied by the complainant, and turned the TV off to go and grind kava. He heard Madeleine Kilman and her mother Susan speaking in their local language but he does not understand it. He said that he left to grind kava. He denied telling the complainant to suck his penis.
33. Mr Julian's evidence as to Count 1 did not cause me to doubt the complainant and Madeleine Kilman's evidence as to Count 1.
34. I find that in December 2020, in the thatch house next to Susan Kilman's house, Mr Julian made the complainant suck his penis. This act of Mr Julian inserting his penis into the complainant's mouth was sexual intercourse as defined in para. 89A(c) of the *Penal Code* and the act of making the complainant suck Mr Julian's penis was sexual intercourse as defined in para. 89A(d) of the *Penal Code*.



35. I find on Ms Kilman's evidence that she heard the movements of 2 people inside the thatch house next to her mother Susan Kilman's house. Then she went outside and found the complainant on the verandah of the thatch house. She suspected that sexual offending had occurred which she immediately raised with the complainant's grandmother. I also find that in the timing of less than 2 minutes between being told by her mother of suspecting sexual offending, Mr Julian had left the thatch house which is consistent with not wanting to be discovered committing criminal offending.

36. In the circumstances, I find that Count 1 has been proved beyond reasonable doubt.

37. I return a verdict of guilty as to Count 1.

F. Count 2

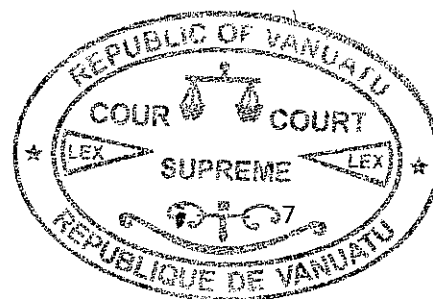
38. This charge is that sometime in March 2021 at Blackgate (L.T.C.) area on Malekula, Mr Julian had sexual intercourse with the boy complainant on 2 occasions by making him suck Mr Julian's penis. The complainant is alleged to have been 6 years old at the time.

39. The complainant's birth certificate was **Exhibit P6**. I find that in March 2021, the complainant was 6 years old.

40. **PW1** the complainant's evidence was that Mr Julian made him suck Mr Julian's penis at the time that they were mourning *apu* Susan's death. He stated that at that time, Mr Julian called him to accompany him to collect water from the water tank behind the L.T.C. building. He stated that at the tank, Mr Julian told him to suck his (Mr Julian's) penis or he would stab him with a knife. He sucked Mr Julian's penis in the space between the 2 water tanks, which he marked with an "X" on the photograph **Exhibit P2**. A closer-in photograph of that spot is marked by a red circle on the photograph **Exhibit P8** which was tendered into evidence during cross-examination of Mr Julian.

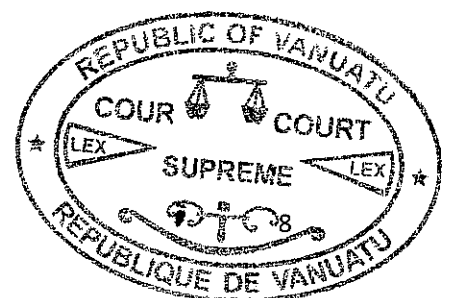
41. The complainant said that when he got home, he told his mum that Mr Julian made him suck Mr Julian's penis.

42. The complainant also gave evidence that Mr Julian made him suck his penis at the kitchen sink in John and Lami's house which is near the L.T.C. building. He said no one else was in the house at the time. He said, "No" but Mr Julian said that if he didn't suck his penis, that he (Mr Julian) would stab him with a knife (*'bae hemi sperem mi lo knife'*). He tendered a photograph of the front of that house [**Exhibit P3**] and a

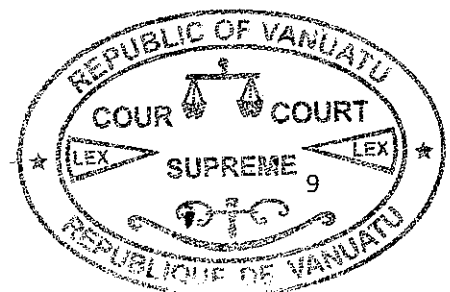


photograph which he marked with an "X" near the kitchen sink where Mr Julian made him suck his penis [Exhibit P4].

43. The complainant's account remained unchanged in cross-examination. He agreed that a rent house, toilet and road are near the water tank but that no one came by. He did not agree that Mr Julian could not have made him suck his penis there because it is a public place. He stated that there was no one else in John and Lami's house. He said it was incorrect that there were others there.
44. It was put to the complainant that he hangs out with the boys at the barber shop and is exposed to them swearing. That he hears those boys swearing using an expression about sucking another's penis. He agreed. I consider that the complainant may have heard swearing by others close to him, but that does not make me doubt his evidence about Mr Julian sexually abusing him.
45. The last 2 questions in cross-examination were as follows. It was put to the complainant that Mr Julian never made him suck his penis – that he (the complainant) was just repeating words that he had heard young men say. He replied, "No!". It was put to him that the alleged events never happened and he just wanted to copy young men. Again, he replied, "No!"
46. In re-examination, the complainant explained that he cried after Mr Julian made him suck his penis. He repeated that football players from Ambrym slept in the rent house near the water tank, but that the place where he and Mr Julian stood next to the water tank was hidden from view.
47. **PW2** the complainant's mother's evidence was that her son the complainant told her on the same day that Mr Julian made him suck his penis what Mr Julian had done. This was in March 2021 after *apu* Susan died. She said that within the same month, Mr Julian forced her son to suck his penis at John and Lami's house, and her son also told her after that happened. She said that she wanted to report Mr Julian to the Police but her father said for her not to do so because the complainant was too young. He said to report Mr Julian when the complainant was older.
48. The complainant's mother's account remained unchanged in cross-examination. She agreed that when she is at work, she does not see who her son hangs out with. She said, though, that he had just started hanging out with the barber shop boys. That son was too young at the time that he told her of Mr Julian's sexual acts with him to hang out with the barber shop boys. She agreed that her son could learn from and repeat others' language. She said that her son said that Mr Julian forced him to suck his penis because that is what happened.



49. The complainant's and his mother's accounts were consistent with each other's.
50. **Mr Julian's** evidence was that when he and the complainant went to collect water from the water tank, Monsieur Wilfred came past, and John and Lami and the football players from Ambrym. He said that after they collected the water, they went to watch clips on a phone in John and Lami's house. However, Mr Julian did not call Monsieur Wilfred, John or a football player from Ambrym as a witness to confirm this aspect of his evidence. I reject this part of Mr Julian's account. I prefer the account of the Prosecution witnesses.
51. Mr Julian called **DW2 Yajima Kilman** as a witness. Mr Kilman is the complainant's uncle. He gave evidence about the complainant being exposed to others around him swearing, and that the complainant says bad swears too. I consider that it is a natural consequence that the complainant as a child has learnt to swear from being exposed to others around him swearing. However, Mr Kilman's evidence did not cause me to doubt the complainant's evidence.
52. Mr Julian called **DW3 Lami Toame** as a witness, but Mr Toame denied that Mr Julian and the complainant ever came to his house. Mr Toame's evidence was that a man called Batick was always in his and John's house at the time. Mr Toame agreed in cross-examination that sometimes Batick would leave the house such as to go to the shop or for to the kava bar.
53. Batick was not called as a witness. I disbelieve Mr Toame's evidence that Mr Julian and the complainant never came to his house and that Batick was always in his and John's house at the time. I find that there would have been times that there was no one else in John and Lami's house, as the complainant related was the case when he and Mr Julian were at that house.
54. I find that in March 2021, Mr Julian called the complainant to accompany him to collect water from a water tank behind the L.T.C. building. At the tank, Mr Julian told the complainant to suck his (Mr Julian's) penis or he would stab him with a knife. The complainant sucked Mr Julian's penis in the space between the 2 water tanks, which he marked with an "X" on the photograph **Exhibit P2**.
55. The complainant said that when he got home, he told his mum that Mr Julian made him suck Mr Julian's penis. I so find.
56. I find also that on another occasion in March 2021, Mr Julian made the complainant suck his penis by the kitchen sink in John and Lami's house near the L.T.C. building. The complainant said, "No" but Mr Julian told him that if he did not suck his penis, that

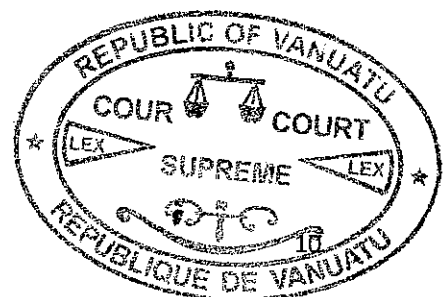


he would stab him with a knife. The complainant sucked Mr Julian's penis in the spot which he marked with an "X" near the kitchen sink in the photograph **Exhibit P4**.

57. Mr Julian's acts of inserting his penis into the complainant's mouth was sexual intercourse as defined in para. 89A(c) of the *Penal Code* and the acts of making the complainant suck Mr Julian's penis was sexual intercourse as defined in para. 89A(d) of the *Penal Code*.
58. In the circumstances, I find that Count 2 has been proved beyond reasonable doubt.
59. I therefore return a verdict of guilty as to Count 2.

G. Count 3

60. This charge is that sometime between 1 May 2022 and 12 May 2022 at Blackgate (L.T.C.) area on Malekula, Mr Julian had sexual intercourse with the boy complainant by making him lick Mr Julian's anus. The complainant is alleged to have been 7 years old at the time.
61. The complainant's birth certificate was **Exhibit P6**. I find that in May 2022, the complainant was 7 years old.
62. **PW1** the complainant's evidence was that at Mr Julian's house, Mr Julian made him lick Mr Julian's anus ("*Hemi mekem mi kakai holsisit blo hem lo haos we hemi silip lo hem.*") He said that Mr Julian was standing and put his anus to the complainant's mouth. He cried and then his mum and *meme* (grandma) Wendy came from *meme* Wendy's house and asked him why he cried. He told them that uncle Roger put his anus to his mouth. He said that when he told his mum, his mum said they would report it to the Police but his grandfather said that he (the complainant) was still small so they would report when he was older.
63. **PW2** the complainant's mother's evidence was that on 10 May 2022, Mr Julian called her son to his house and forced him to lick Mr Julian's anus ("*hemi forcem hem blo titi lo holshit blo hem*"). Mr Julian was holding a knife, and told her son that if he didn't lick his anus, that he would stab him with the knife. She was at Wendy Kilman's house and heard her son cry. He told her that Mr Julian forced him to lick his anus and that he threatened him with a knife. The next day, they went to the Police station and reported the matter.
64. Her account remained unchanged in cross-examination.



65. The complainant's and his mother's accounts were consistent with each other's.
66. Both the complainant and his mother gave evidence that the complainant's grandfather discouraged them to make a Police complaint. I find that the grandfather did so from the first time that the complainant told his mother about Mr Julian's offending against him. I accept that the complainant and his mother reported Mr Julian to the Police in May 2022, the day after the complainant told his mother that Mr Julian forced him to lick his anus.
67. **Mr Julian's** evidence was that his family members were at home. He stated that he was never left alone with the complainant. He denied forcing the complainant to lick his anus. He said that at the time, he was erecting a wall to divide a room in the house, putting up masonite to make that wall. However, none of Mr Julian's family members were called as witnesses. I reject this aspect of the defence case.
68. I find that Mr Julian made the complainant lick his anus at Mr Julian's house. I also find that Mr Julian was holding a knife at the time, and told the complainant that if he didn't lick his anus, that he would stab him with the knife. The complainant's mother heard the complainant cry and then he told her what Mr Julian had done. Mr Julian's act of making the complainant lick his anus was sexual intercourse as defined in para. 89A(d) of the *Penal Code*.
69. In the circumstances, I find that Count 3 has been proved beyond reasonable doubt.
70. I therefore return a verdict of guilty as to Count 3.
- H. Result
71. I return verdicts of guilty on all 3 counts. Mr Julian is convicted of the charges.

**DATED at Lakatoro, Malekula this 5<sup>th</sup> day of September, 2025  
BY THE COURT**

*VM Trief*  
Justice Viran Molisa Trief

